

## INTERIM AGREEMENT

This INTERIM AGREEMENT ("Interim Agreement") dated this \_\_\_ day of May, 2010 is between the CITY OF WILLIAMSBURG, a Virginia Municipal Corporation ("Owner") and CB&I, INC., a Texas Corporation ("PPEA Contractor"), doing business in Virginia as CB&I Constructors, Inc., whose Identification Number (FEIN) is 363046868, and is binding among and between these parties from the date performance begins.

WHEREAS, Owner contemplates development of the following Project (Project) identified as:

Project Title: Riverside Elevated Water Tank

The Project consists of Design and Construction of a 0.75 million gallon elevated water storage tank constructed in a Waterspheroid configuration to be part of Owner's public water supply system. Such Project is to be located on an irregular shaped parcel of land located in the City of Williamsburg containing 58608± sq. ft. provided by Owner (the "tank site") together with a 16 foot-wide access easement to U.S. Route 60 and an adjacent lay-down area abutting U.S. Route 60 on the north and the tank site on the south. (The approximate configuration of the tank parcel, the access easement and lay-down area are shown on Exhibit A attached hereto); and,

WHEREAS, PPEA Contractor submitted its Unsolicited PPEA Proposal (Proposal) on January 5, 2010 under the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA), Va. Code § 56-57.1, et seq., in order to form a public-private effort to provide Owner certain design, permitting, and construction services in connection with the Project; and,

WHEREAS, Owner had received a prior unsolicited proposal on October 29, 2009 (the "Initial Proposal") and as required by applicable law, on or about November 21, 2009 advertised receipt of such Initial Proposal and invited any competing proposals to be submitted to it by January 5, 2010 for consideration. On January 5, 2010, Owner received PPEA Contractor's proposal (the "Second Proposal") in response to such advertisement; and,

WHEREAS, Owner subsequently determined PPEA Contractor's Proposal (the Second Proposal) to be a qualifying project advised PPEA Contractor that Owner intended to proceed with negotiations on an interim agreement for the design and construction of the Riverside Elevated Water Storage Tank in the City of Williamsburg.

WHEREAS, Owner and PPEA Contractor desire to commence, on the terms and subject to the conditions set forth in this Agreement, the Services, defined below, while the parties are negotiating the definitive Comprehensive Agreement for PPEA Contractor's full performance of the construction of the Project (the "Comprehensive Agreement").

**NOW, THEREFORE,** in consideration of the Recitals set forth above, and good and valuable consideration as set forth below, the parties agree as follows:

**1. Recitals.** Owner and PPEA Contractor each represents to the other that following recitals as they pertain are true and correct as to the declarant and shall remain true throughout the term of this Interim Agreement.

A. Owner's Representations and Warranties. Owner hereby represents and warrants to PPEA Contractor as follows:

(1) Owner is a municipal corporation duly chartered and operating under the laws of the Commonwealth of Virginia and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this Agreement.

(2) Each person executing this Agreement on behalf of Owner is duly authorized to execute each such document on behalf of Owner.

(3) Neither the execution and delivery by Owner of this Interim Agreement and any other documents executed concurrently herewith to which Owner is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which it is a party or by which it is bound.

(4) There is no action, suit, proceeding, investigation or litigation pending and served on Owner as of the date of this Agreement which challenges Owner's authority to execute, deliver or perform, or the validity or enforceability of this Agreement and the other related documents to which Owner is a party, or which challenges the authority of Owner official executing this Agreement or the other related documents, and Owner has disclosed to PPEA Contractor any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Owner is aware.

B PPEA Contractor's Representations and Warranties. PPEA Contractor hereby represents and warrants to Owner as follows:

(1) PPEA Contractor represents that CB&I, Inc., does business in Virginia as CB&I Constructors, Inc., and in signing this Interim Agreement as well as such Comprehensive Agreement as may be entered into between the parties, is acting on behalf of itself and in so doing, has full power and authority to bind itself to the terms thereof.

(2) PPEA Contractor has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under this Agreement and the other related documents to which PPEA Contractor is a party.

(3). Each person executing this Interim Agreement or any other related document on behalf of PPEA Contractor has been or will at such time be duly authorized to execute each such document on behalf of PPEA Contractor.

(4) Neither the execution and delivery by PPEA Contractor of this Agreement and the other related documents to which PPEA Contractor is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or a violation of the governing instruments of PPEA Contractor or any other agreements or instruments to which it is a party or by which it is bound.

(5) There is no action, suit, proceedings, investigation or litigation pending and served on PPEA Contractor which challenges PPEA Contractor's authority to execute, deliver or perform, or the validity or enforceability of this Interim Agreement and the other related documents to which PPEA Contractor is a party, or which challenges the authority of PPEA Contractor official executing this Agreement or the other related documents; and PPEA Contractor has disclosed to Owner any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which PPEA Contractor is aware.

(6) PPEA Contractor is in material compliance with all laws, regulations and ordinances applicable to PPEA Contractor or its activities in connection with this Interim Agreement and the other related documents.

(7) PPEA Contractor certifies that all material representations, information and data provided in support of, or in connection with, the proposal for the Project are true and correct.

(8) PPEA Contractor acknowledges that Owner is prohibited by law from undertaking any indemnity obligations to PPEA Contractor.

(9) The representations and warranties of PPEA Contractor contained herein shall survive expiration or termination of this Interim Agreement.

**2. Definitions.** The following definitions apply to this Agreement. Capitalized Terms not defined herein shall have the meanings as defined in the PPEA, The Guidelines and PPEA Contractor's Proposal as modified by Attachment B to this Agreement.

A "Codes and Standards" means all Legal and Permitting Requirements including, but not limited to Virginia Department of Health (VDH) "*Waterworks Regulations*"; Virginia Department of Transportation regulations and entrance design requirements; City of Williamsburg and James City County site plan design requirements and procedures; Federal Aviation Administration regulations; Virginia Department of Conservation and Recreation as well as all practices, care and skill used by members of the design and engineering professions in the Commonwealth of Virginia practicing on similar projects at the same time.

B. "Design Professionals" or "Design Consultants" means any of those engineers, and consultants providing any services relating to the Project and any of the firms that employ any of them, as engaged by PPEA Contractor. The engineers designated in the Proposal are the Timmons Group. In the event PPEA Contractor desires to change Design Professionals, approval must be obtained from Owner, which approval may not be unreasonably withheld.

C. "Facility" means the Riverside Elevated Water Tank, as more specifically described in the Proposal.

D. "Plans" means Project specific drawings prepared by the Design Professionals which describe the Project in sufficient detail to confirm compliance with Codes and Standards and for PPEA Contractor to perform the Work under a Comprehensive Agreement between Owner and PPEA Contractor in accordance with the terms and conditions thereof. Fabrication and Construction documents for the tank itself are outside of this definition and will be provided as part of the Comprehensive Agreement.

E. "Project" means the design, development and construction of the Riverside Elevated Water Tank Project as contemplated by the Proposal. "Project" includes both the entirety of the Project or a part thereof.

F. "Proposal" means PPEA Contractor's Proposal dated January 5, 2010, attached hereto as "Attachment A" and as modified by "Attachment B" attached hereto.

G. "Services" for purposes of this Interim Agreement means all professional design and engineering services as needed for the construction of the Facility and preparation of all submissions and obtaining all permits and approvals necessary to proceed with the Project in accordance with the Plans as defined herein below.

H. "Site" means the site of the Riverside Elevated Water Tank, which is located on a parcel to be subdivided from the remainder of the property being developed by Riverside Health Care Association, Inc. and located at the Northwest corner of the intersection of State Route 199 and US Route 60 in Williamsburg, Virginia.

### **3. PPEA Contractor's Responsibilities.**

A. Under this Interim Agreement, PPEA Contractor using the Design Professionals shall provide all Services necessary to proceed with construction of the Project, all as more particularly set forth in the Proposal.

B. PPEA Contractor shall provide the Services in accordance with the schedule set forth in "Exhibit B" attached hereto ("Interim Agreement Schedule").

C. Owner and PPEA Contractor shall use their best efforts to maintain the Interim Agreement Schedule, which can be modified by mutual written agreement of the Parties as circumstances warrant.

D. PPEA Contractor shall procure and throughout the term of this Interim Agreement shall maintain insurance in accordance with Sections 8 and 9 C hereinbelow.

E. The parties intend to use a design-build approach for the design and construction of the Facility.

F. Because this is a design-build project, Owner does not provide to PPEA Contractor any warranty, express or implied, regarding any services or design performed by Owner's or PPEA Contractor's consultants, agents or employees for the Project. PPEA Contractor shall be responsible for all acts and omissions of the Design Professionals.

#### **4. Owner's Responsibilities.**

A. Owner shall have the responsibilities set forth herein as well as set forth in Attachment A and B.

B. Owner shall provide a proposed form of Comprehensive Agreement in sufficient time to avoid delay to the Project.

#### **5. Interpretation and Intent.**

A. Terms, words and phrases used in this Interim Agreement shall have the meanings given them in this Agreement and the Proposal.

B. This Interim Agreement forms the entire Agreement between Owner and PPEA Contractor, No oral representations or other agreements have been made by the Parties except as specifically stated in the Interim Agreement.

C. Execution of this Interim Agreement shall not bind Owner to engage or retain PPEA Contractor for any additional services through a subsequent Interim Agreement, a Comprehensive Agreement or any other contract.

#### **6. Contract Price.**

If Owner elects to proceed with the Project after acceptance of PPEA Contractor's detailed phase proposal, a Lump Sum Price shall be set forth in a Comprehensive Agreement between Owner and PPEA Contractor in accordance with the PPEA and the Guidelines.

#### **7. Interim Agreement Price and Payments.**

A. Interim Agreement Price: In consideration of its services under this Interim Agreement, Owner shall pay PPEA Contractor the sum of One Hundred Twenty Five Thousand Dollars (\$125,000.00) payable as provided in subsection b hereof. The Interim Agreement Price is a not-to-exceed amount that will be billed and paid based on percentage of completion of the Services identified on Attachment D. Any amounts paid pursuant to this Interim Agreement shall be credited against PPEA Contractor's Proposal Price for purposes of negotiating the Lump Sum Price contained in the final Comprehensive Agreement.

B. Progress Payments: Beginning on the calendar month next following the month when all parties have signed this Interim Agreement, PPEA Contractor shall submit to Owner on the fifth (5th) day of each month, PPEA Contractor's Application for Payment for Services rendered under this Interim Agreement since the previous application for payment, together with reimbursement of all permitting fees and costs advanced by PPEA Contractor or the Design Professionals to State, County, and Local Permitting Agencies pursuant to this Interim Agreement. Applications for Payment shall be based on the Agreed Schedule of Values attached hereto as Attachment D. Applications for payment shall be in form and level of detail as reasonably required by Owner. Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment.

## **8. Insurance.**

At all times during the performance of the work under this Agreement, PPEA Contractor shall take out and maintain each of the following insurances with insurance companies reasonably satisfactory to Owner:

A. Workers' Compensation and Employers' Liability Insurance for all of its employees engaged in work on the Project in an amount not less than the minimum required by Va. Code §§2.2-4332 and 65.2-100 *et seq.*, and, in case any of such work on the Project is sublet, PPEA Contractor shall require each subcontractor similarly to provide Workers' Compensation and Employers' Liability Insurance for all of the latter's employees to be engaged in such work. Upon written request by Owner, PPEA Contractor shall submit on the form provided by Owner a Certificate of Coverage verifying Workers' Compensation. PPEA Contractor shall likewise obtain a Certificate of Coverage for Workers' Compensation coverage from each subcontractor prior to awarding the subcontract and maintain in on-site files.

B. Commercial general liability insurance to include Premises/ Operations Liability, Products and Completed Operations Coverage, Independent PPEA Contractor's Liability, Owner's and PPEA Contractor's Protective Liability, and Personal Injury Liability, which shall insure it against claims of personal injury, including death, as well as against claims for property damage, which may arise from operations under this Agreement, whether such operations be by itself or by any subcontractor, or by anyone directly or indirectly employed by either of them. The amounts of general liability insurance shall be not less than \$2,000,000.00 per occurrence and \$2,000,000.00

aggregate combined limit. Owner, and its officers, employees and agents, shall be named as an additional insured with respect to the Services being performed by PPEA Contractor.

C. Automobile liability insurance which shall insure it against claims of personal injury, including death, as well as against claims for property damage, which may arise from operations under this Agreement, whether such operations be by itself or by any subcontractor, or by anyone directly or indirectly employed by either of them. The amounts of automobile insurance shall be not less than \$1,000,000.00 combined limit for bodily injury and property damage per occurrence.

D. Umbrella or Excess Liability insurance for a minimum single limit of \$5,000,000.00 supplementing the Commercial General Liability policy and Business Automobile Liability policy.

PPEA Contractor may satisfy the minimum liability limits required above for Commercial General Liability and Business Automobile Liability under an Umbrella or Excess Liability policy.

PPEA Contractor shall be responsible for the filing and settling of claims with insurance adjusters.

Owner reserves the right, but not the obligation, to review and revise any insurance requirement, including but not limited to limits, sub-limits, deductibles, self-insured retentions, coverages and endorsements based upon insurance market conditions affecting the availability or affordability of coverage, or changes in the scope of work/specifications affecting the applicability of coverage, provided Owner compensates PPEA Contractor for any additional costs incurred to obtain insurance criteria different from that specified herein.

Owner, and its officers, employees and agents, and any lender, trustee or similar party in relation to financing of the Project (“Lender”), shall be named as additional insureds with respect to the Work being performed by PPEA Contractor in the above-required commercial general liability, automobile liability, umbrella or excess liability insurance policies. Upon written request, PPEA Contractor agrees to provide Owner Certificates of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and are in full force and effect. The Certificates of Insurance shall clearly indicate the Project name. Said Certificates of Insurance shall include a minimum thirty (30) day notice to Owner and Lender due to cancellation or non-renewal of coverage. The Certificate Holder address shall read:

City of Williamsburg, Virginia  
401 Lafayette Street  
Williamsburg, Virginia 23185

## **9. Design Professionals and Ownership of Plans.**

PPEA Contractor represents and warrants that the Design Professionals for the Project shall, without limitation, comply with the following:

A. PPEA Contractor shall deliver to Owner copies, including reproducible copies, of the Plans and other related documents for information and reference in connection with Owner's use and occupancy of the Project. Further, the Plans and other related documents may be used by Owner, in whole or in part, or in modified form, for completion and maintenance of the Project by others, without further employment of, or payment of any additional compensation to any of the Design Professionals, in which event Owner shall release PPEA Contractor and such Design Professionals from any responsibility for the conformance of the incomplete portions of the Project to the Plans and other related documents from causes other than the negligence or fault of such professionals. In the event of the termination of this Agreement for any reason, PPEA Contractor shall immediately deliver to Owner a full set of copies of the Plans and other related documents then in the possession or control of PPEA Contractor or the Design Professionals retained by PPEA Contractor;

B. Owner shall have the non-assignable right to use the Plans and the other related documents for the construction of structures by or for Owner other than the Project without the payment of any additional compensation to PPEA Contractor or the Design Professionals, in which event Owner shall release such Design Professionals and PPEA Contractor from any responsibility in connection with the Plans and other related documents to the extent so used. Use of the Plans and other related documents by Owner prior to final completion of the Project or termination of the Contract for construction of buildings by or for Owner other than the Project shall only be allowed with the consent of PPEA Contractor. Notwithstanding the foregoing, the Plans are instruments of service, and PPEA Contractor and the Design Professional (as they have agreed among themselves), shall retain the rights to reuse or site adapt the plans for other projects whether or not in contract with Owner. This Subsection permits PPEA Contractor, the Design Professionals or Owner to make use of the Plans for future projects without the consent of, or compensation to the other. In the event that Owner elects to reuse the Plans, and Owner engages the services of licensed professionals to review, site adapt, sign and seal the Plans as architect and engineer of record for other projects, Owner's use of the Plans shall extend to these professionals to the extent they use the Plans solely for Owner. Except as otherwise provided in this Interim Agreement or in the Comprehensive Agreement, no Plans shall be used with PPEA Contractor's or Design Professional's title block, logo or company name without the written consent of PPEA Contractor or Design Professional.

C. The Design Professionals shall carry professional liability insurance, on a claims-made basis, in an amount not less than \$2,000,000.00 per claim and aggregate. Such policies shall be on a claims-made basis kept in force for no less than five years after the final completion of the Work. PPEA Contractor shall cause each Design Professional to agree in writing to indemnify and hold harmless Owner (with Owner being expressly named as a third party beneficiary of such agreement between the PPEA



Contractor and such Design Professional) from claims, losses or damages, to the extent caused by (i) the negligent errors or omissions in Design Services performed by such Design Professional or (ii) claims of patent infringement, copyright infringement, or similar claims arising from such Design Professional's Design Services. PPEA Contractor shall furnish Owner with copies of such insurance policy or policies and written agreement described above.

D. PPEA Contractor shall ensure that the requirements of this Section are incorporated into its contracts with its Design Professionals and that they incorporate these same requirements into their subcontracts with other Design Professionals so that Owner is able to enjoy the full benefits of this Section.

## **10. Indemnification.**

A. PPEA Contractor shall to the extent not covered by applicable insurance indemnify and hold Owner harmless, to the fullest extent permitted by law, from any and all third party claims, demands, suits, penalties, proceedings, administrative or judicial orders, causes of action, losses, liabilities, damages or expenses, including reasonable attorney's fees and disbursements, arising out of (i) bodily injury, sickness or death and property damage or destruction (other than to the Project itself) in connection with the performance of PPEA Contractor's duties under this Interim Agreement, but only to the extent of PPEA Contractor's negligence, or intentional act (ii) any claim of patent infringement or copyright infringement committed by PPEA Contractor or any of its Design Professionals; or (iii) any failure by PPEA Contractor in its performance of the Project to comply with any Codes and Standards; provided, however, that such obligation by PPEA Contractor to indemnify and hold Owner harmless shall not apply to any loss, liability, damage or expense, including attorneys' fees, to the extent caused by Owner or its employees, agents, consultants or PPEA Contractors.

B. PPEA Contractor's obligation to indemnify, defend and hold any indemnities harmless shall apply only to claims of third parties, to the extent caused by PPEA Contractor's negligence, and shall be limited to the proceeds of insurance required under this Interim Agreement. The foregoing shall apply regardless of whether liability or remedies arise in contract, negligence, strict liability or otherwise.

C. Neither Owner nor PPEA Contractor, nor its subcontractors nor their respective officers, directors, employees, agents or representatives, shall be liable for consequential, incidental, indirect, special or punitive damages resulting from Services performed under this Interim Agreement.

## **11. Comprehensive Agreement.**

If at its sole election, Owner elects to proceed with the Project after acceptance of Contractor's detailed phase proposal, a Lump Sum Contract Price shall be set forth in the Comprehensive Agreement in accordance with the PPEA and the Guidelines. The Lump

Sum Contract Price shall be substantially as set forth in the PRICING SUMMARY on page 81 of Attachment A and shall be adjusted as follows:

A. Such Price shall be increased by the total cost of Options chosen by Owner as indicated on page 3 of 4 and 4 of 4 of Attachment B and by any other options that Owner may select in the course of negotiating the Comprehensive Agreement.

B. Such Price shall be increased/decreased to reflect any increase or decrease in the cost of steel that occurs between December 2009 and the end of the month immediately prior to the date of signing the Comprehensive Agreement when compared to the benchmark set forth in letter from Contractor to Owner dated February 23, 2010, a copy of which is attached hereto as Attachment C.

C. Such Price shall be increased or decreased by any amount that SCADA Provisions rise or fall below the \$10,000.00 Allowance stated on page 3 of 4 of Attachment B.

D. Such Price shall be increased to cover the reasonable costs of material, equipment, and labor plus 15 % overhead and profit should soil testing reveal the necessity of a more extensive foundation than that described in Appendix C, Section 1, page 77 and Appendix C, Section 4 page 85 of Attachment A.

## **12. Stop Work and Termination for Cause.**

A. Owner's Right to Stop Work. Owner may, without cause and for its convenience, order PPEA Contractor in writing to stop and suspend the Work. Such suspension shall not exceed ninety (90) consecutive days, unless the parties agree to further extend said suspension.

B. Owner's Right to Terminate for Cause.

(1) If PPEA Contractor persistently fails to (i) provide a sufficient number of design professionals; (ii) perform the Services with promptness and diligence to ensure that the detailed design and permitting are completed in accordance with the Interim Agreement Schedule; or if PPEA Contractor (i) becomes insolvent; (ii) makes a general assignment for the benefit of its creditors; (iii) commences or consents to any action seeking reorganization, liquidation or dissolution under any law relating to bankruptcy or relief of debtors; or (iv) commences or consents to any action seeking appointment of a receiver or trustee for itself or its assets, then Owner, shall have the rights set forth in Article 9 B (2) below.

(2) Upon the occurrence of an event set forth in Article 9 B (1) above, Owner may provide written notice to PPEA Contractor that it intends to terminate the Interim Agreement unless the problem cited is cured, or reasonably commenced to be cured, within 30 days of PPEA Contractor's receipt of such notice. If PPEA Contractor fails to cure, or reasonably commence to cure, such problem, then

Owner may declare the Agreement terminated for default by providing written notice to PPEA Contractor of such declaration. In such case, PPEA Contractor shall not be entitled to receive any payment until the Services are complete. If the unpaid balance due PPEA Contractor under this subparagraph exceeds all direct costs, losses, and damages sustained by Owner in completing the Services (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or other dispute resolution costs), such excess will be paid to PPEA Contractor. If such costs, losses and damages exceed such unpaid balance, PPEA Contractor shall pay the difference to Owner.

C. PPEA Contractor's Right to Terminate for Cause. Upon Owner's failure to make payments in accordance with the provisions hereof, PPEA Contractor may, upon thirty (30) days written notice, terminate its obligation to provide further services.

### **13. Termination for Convenience.**

Upon seven (7) days written notice to PPEA Contractor, Owner may, for its convenience and without cause, elect to terminate this Interim Agreement. In such event, Owner shall pay PPEA Contractor for the following:

A. All Work executed in connection with the Interim Agreement in accordance with the payment terms of the Interim Agreement;

B. Owner shall not be obligated to pay PPEA Contractor for profit on services not performed as a result of such termination.

### **14. Standard of Care.**

PPEA Contractor agrees that the standard of care for all professional design and engineering services performed or otherwise provided under this Interim Agreement shall be the care and skill ordinarily used by members of the design and engineering professions in the Commonwealth of Virginia practicing on similar projects at the same time.

### **15. Resolution of Disputes, Claims and Other Matters.**

Disputes, claims and other matters in question between the Parties under the Interim Agreement shall only be resolved as follows:

A. The Parties shall first endeavor to resolve any disputes, claims or other matters in question between them through direct negotiations, and if such direct negotiations fail, by non-binding mediation, with the site of the mediation being in the City of Williamsburg, Virginia, which is agreed to be the sole and exclusive venue. Should the dispute, claim, or other matter in question remain unresolved for the shorter of (i) the period following negotiation and mediation, or (ii) more than ninety (90) days after

mediation is requested by a Party, either Party may proceed in accordance with subparagraph 15 B below.

B. If the procedures of subparagraph 15 A have been followed, but, more than ninety (90) days have passed since a Party has requested mediation, and the dispute, claim or matter in question remains unresolved, then either Party may institute a lawsuit in the Circuit Court of the City of Williamsburg and County of James City, Virginia, and may pursue all available appeals in Virginia state courts, to the extent they have jurisdiction.

C. Nothing in paragraphs A or B shall prevent a Party from seeking temporary injunctive or other temporary equitable relief in the Circuit Court of the City of Williamsburg and County of James City, Virginia if circumstances so warrant.

D. In the event of any dispute, claim, or other matter in question arising, PPEA Contractor shall continue its performance diligently during its pendency as if no dispute, claim or other matter in question had arisen. During the pendency of any dispute in connection with the payment of moneys, PPEA Contractor shall be entitled to receive payments for non-disputed items.

## **16. Notices.**

All notices and demands by any party to any other shall be given in writing and sent by a nationally recognized overnight courier or by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Owner: Jackson C. Tuttle II, City Manager  
City of Williamsburg Municipal Building  
401 Lafayette Street  
Williamsburg, Virginia 23185  
Telephone: (757) 220-6100  
Telefax: (757) 220-6107

With copies to: Office of City Attorney  
City of Williamsburg Municipal Building  
401 Lafayette Street  
Williamsburg, Virginia 23185

To PPEA Contractor: CB & I Constructors, Inc.  
Attn: Daniel A. Knight  
24 Reads Way  
New Castle, DE 19720  
Facsimile No.: (302) 325-8425  
Telephone No.: (302 ) 325-8401

Any party may, upon prior notice to the others, specify a different address for the giving of notice. Notices shall be effective one (1) day after sending if sent by overnight courier or three (3) days after sending if sent by certified mail, return receipt requested.

## **17. Nondiscrimination.**

PPEA Contractor covenants and agrees that during the performance of this Agreement:

A. PPEA Contractor shall conduct its activities in connection with the Project in compliance with all requirements imposed pursuant to Title 2.2, Chapter 42, Sections 4200 *et seq.* of the *Code of Virginia*; Sections 2.2-4310 and 2.2-4311 of the *Code of Virginia*; Titles VI and VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; and all applicable rules and regulations. PPEA Contractor agrees that during the performance of this Agreement:

(1) PPEA Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of PPEA Contractor. PPEA Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(2) PPEA Contractor, in all solicitations or advertisements for employees placed by or on behalf of PPEA Contractor, will state that it is an equal opportunity employer.

(3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

B. PPEA Contractor will include the provisions of the foregoing subsections (1), (2) and (3) in every subcontract or purchase order of over \$ 10,000, so that the provisions will be binding upon each subcontractor or vendor.

## **18. Drug-Free Workplace.**

A. During the performance of this Agreement, PPEA Contractor agrees to (i) provide a drug-free workplace for PPEA Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in PPEA Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for

employees placed by or on behalf of PPEA Contractor that PPEA Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this Section, “drug-free workplace” means “a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.”

B. PPEA Contractor shall also establish, maintain and enforce policies which prohibit the following acts by all PPEA Contractor, subcontractor and supplier personnel at the Project:

- (1) The manufacture, distribution, dispensation, possession, or use of alcohol, marijuana or other drugs, except possession and medically prescribed use of prescription drugs; and
- (2) The impairment of judgment or physical abilities due to the use of alcohol, marijuana or other drugs, including impairment from prescription drugs.

## **19. Illegal Aliens.**

PPEA Contractor does not, and shall not during the performance of this Interim Agreement knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

## **20. Successors and Assigns.**

Except as expressly otherwise provided, all of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. This Interim Agreement may not be assigned by PPEA Contractor without the prior written consent of Owner, exercised in the sole discretion of the Williamsburg City Council.

## **21. Independent Contractor.**

The parties understand and agree that PPEA Contractor, in performing its obligations under this Interim Agreement, shall be deemed an independent PPEA Contractor and not an agent, employee or partner of Owner.

## **22. Counterparts.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but both of such counterparts together shall be deemed to be

one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for the other counterpart.

### **23. Governing Law.**

This Interim Agreement shall be governed by, and construed in accordance with the laws of the Commonwealth of Virginia.

### **24. Annual Appropriation.**

The financial obligations of Owner contained in this Interim Agreement are subject to annual appropriation of funds by the Williamsburg City Council.

### **25. Discrepancies.**

In event of any discrepancy between this Interim Agreement and the Proposal (Attachment A), this Interim Agreement shall control.

### **26. Exhibits.**

The following are attached hereto and made part of this Interim Agreement:

1. Attachment A — PPEA Contractor's Proposal entitled "City of Williamsburg Riverside Elevated Water Tank PPEA Volume 2" dated January 5, 2010.
2. Attachment B — Modification And Clarification Of Terms Re Vol 2 Of Proposal By CB&I Contractors, Inc. To The City Of Williamsburg Dated January 5, 2010.
3. Attachment C — Letter dated February 23, 2010 from Daniel A. Knight to Dan Clayton re adjustment of price based on cost of steel.
4. Attachment D — Agreed Schedule of Values.
5. Exhibit A – Plat of the project property entitled "Riverside Watertank Site, Access Road Easement, and Temporary Construction Easement" prepared by Timmons Group.
6. Exhibit B – Interim Agreement Schedule dated April 12, 2010.

IN WITNESS WHEREOF the undersigned have executed this contract on the dates set forth beside their respective signatures.

SIGNATURES ON NEXT PAGE

PPEA CONTRACTOR  
CB&I, INC.

Date: \_\_\_\_\_, 2010

By \_\_\_\_\_

Authorized Signer's Name: \_\_\_\_\_

Title \_\_\_\_\_

OWNER  
CITY OF WILLIAMSBURG, VIRGINIA

Date: \_\_\_\_\_, 2010

By \_\_\_\_\_

Jackson C. Tuttle II, City Manager